IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

QUAN LEWAYNE DAVIS	:	
v.	:	Civil Action No. DKC 2004-2677
PRINCE GEORGE'S COUNTY, MARYLAND, et al.	:	

MEMORANDUM OPINION

Presently pending and ready for resolution is Plaintiff's motion to reopen. The issues are fully briefed, and the court now rules pursuant to Local Rule 105.6, no hearing being deemed necessary. For the following reasons, the motion will be denied.

On July 8, 2005, this court dismissed Plaintiff's complaint in its entirety, dismissing some claims with prejudice, but providing Plaintiff 15 days within which to file an amended complaint as to other claims which were stricken. (Paper 30). The memorandum opinion and order were served on counsel via the court's electronic filing system. Counsel for Plaintiff was served at: charlesjeromeware@msn.com. The docket entry accompanying the filing reads as follows:

> ORDER "GRANTING" [11] Motion of Defendants to Strike the Complaint of the Plaintiff without prejudice to the filing of an Amended Complaint within 15 days of the issuance of this order; "GRANTING" with prejudice in part and "DENYING" without

> prejudice in part [4] Motion of Defendants Prince George's County Police Department and Prince George's County, Maryland to Dismiss, [10] Motion of Defendants Glenn F. Ivey, Kenneth Krouse, Frances Longwell, University of Maryland Police/Department of Public Safety, and University of Maryland College Park to Dismiss, and [20] Motion of Defendant Ismael V. Canales to Dismiss - "GRANTING" with prejudice as to all claims against the Prince George's County Police Department, the University of Maryland Police/Department of Public Safety, the Prince George's County State's Attorney, Glenn F. Ivey, and Frances Longwell; "GRANTING" with prejudice as to all claims against Kenneth Krouse in his official capacity as an officer of the state; "GRANTING" with prejudice as to all claims for defamation; "GRANTING" with prejudice as to all claims under 42 U.S.C. Section 1983 which call into question the validity of Plaintiff's convictions; and "DENYING" without prejudice as to all other claims. Signed by Judge Deborah K. Chasanow on 7/8/2005. (Chasanow, Deborah).

No amended complaint was filed within the 15 day period. On August 4, 2005, a motion was filed concerning the withdrawal of counsel for some of the defendants, which was also served on counsel for Plaintiff. On August 5, 2005, the court granted the motion to withdraw. On August 10, 2005, the case was terminated by the clerk as closed.

On August 18, 2005, a letter arrived in chambers, dated the day before, from counsel for Plaintiff, asking that the case be reopened to allow Plaintiff an opportunity to amend. The letter stated that Plaintiff’s father went to the clerk’s office in

Baltimore on August 16, 2005, and discovered the court's order and memorandum. The court advised Mr. Ware, via the electronic system, that the letter was not an appropriate method for seeking an extension of time within which to file an amended complaint and that an electronically filed motion would be needed. A motion was filed August 24, 2005, merely reiterating the information in the original letter. Oppositions were filed by the state and local defendants. Plaintiff then filed a reply, citing to two cases, but still providing scant detail as to why counsel did not look at the electronic mail notices sent in this case. The email address from which Plaintiff's recent filings were sent remains the same.

The history of this case contains earlier instances of inaction by counsel. The first motion to dismiss was filed by the Prince George's Police Department on September 24, 2004. Plaintiff did not timely respond, and, on October 25, 2004, notified the court of his opposition in a bare bones filing that also recited that counsel had not received the electronic filing. Two additional motions had also been filed on October 18, 2004 by two other separate sets of defendants, to which Plaintiff did not respond. On November 16, 2004, the court wrote to counsel for Plaintiff stating that Plaintiff had only responded to one of the motions, that two others were pending,

and that if the court did not receive oppositions within 5 days, the motions would be considered to be unopposed.

Still claiming that technical difficulties were impeding access to the electronic file, Plaintiff sought and received an extension of time to file the oppositions. Even when filed, the memoranda were, as stated in this court's opinion, "woefully inadequate." The court nevertheless attempted to wade through the over long, but imprecise, complaint to ferret out those claims that clearly lacked legal merit from those that might possibly proceed, if Plaintiff produced a properly crafted complaint.

Despite the admitted discovery of this court's order in mid-August, Plaintiff has still not proposed an amended complaint. Instead, counsel simply requests an extension of time, without limit, based solely on his assertion that he did not receive notice contemporaneous with the filing of the memorandum and order.

When the time for filing a paper has expired, a party must move pursuant to Fed.R.Civ.P. 6(b)(2), and must show that "the failure to act was the result of excusable neglect."

> In *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993), the Supreme Court interpreted the phrase "excusable neglect." The Court articulated four

> factors to be considered in determining whether excusable neglect has occurred: "[1] danger of prejudice to the [non-movant], [2] the length of delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith." *Id.* at 395, 113 S.Ct. 1489. The Fourth Circuit has noted "that 'inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect.'" *Thompson v. E.I. DuPont de Nemours & Co., Inc.*, 76 F.3d 530, 533 (4th Cir. 1996) (citing *Pioneer*, 507 U.S. at 392, 113 S.Ct. 1489). "'Excusable neglect' is not easily demonstrated, nor was it intended to be." *Id.* at 534.

Cronin v. Henderson, 209 F.R.D. 370, 371 (D.Md. 2002)(footnotes omitted.) Furthermore, in *Pioneer*, the Supreme Court specifically observed that it was appropriate to hold a client accountable for the mistakes of counsel. *Pioneer*, 507 U.S. at 392.

The motion to reopen will be denied. Counsel for Plaintiff were well aware that the court uses an electronic filing system and had ample time to correct whatever deficiencies existed in his office causing delay in access. Counsel has not demonstrated diligence in pursuing this case from the beginning, having to be directed by the court to file responses to the substantial and meritorious motions to dismiss, and then not filing anything of assistance to the court, despite the

extensions of time. At this late date, Plaintiff has not even proposed an amended complaint that begins to meet the standards set forth in the rules. Other than protestations of sincerity in pursuing litigation, Plaintiff, through counsel, has not addressed the other three factors for finding excusable neglect. Because Plaintiff has not proposed an amended complaint, it is impossible to assess the prejudice to those defendants as to whom the complaint was not previously dismissed with prejudice. At the least, this action, which has been pending for some time, has not progressed past the pleading stage. While this last delay is only two months, it follows other periods of inaction on the part of Plaintiff. Finally, the reason for the delay was clearly within the control of the movant. As noted above, counsel has repeatedly been cautioned that the electronic filing notice feature of the court's system was the only way he would be notified of filings. Counsel for Plaintiff had difficulty earlier in this case, yet apparently took no steps to make sure that he received timely notification of filings.

Accordingly, without the presentation of an adequate proposed amended complaint, there is no reason to reopen this case and the current motion will be DENIED.

/s/

DEBORAH K. CHASANOW
United States District Judge